

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

FRANK SEAGER and CAROL
SEAGER,

Plaintiffs,

v.

Case No.: 2:20-cv-728-FtM-38MRM

HARTFORD INSURANCE
COMPANY OF THE MIDWEST,

Defendant.

_____ /

OPINION AND ORDER¹

Before the Court is Defendant Hartford Insurance Company of the Midwest's Motion to Dismiss Complaint. ([Doc. 4](#)). Plaintiffs Frank and Carol Seager have not responded, and the time to do so has expired.² For the below reasons, the Court denies without prejudice the motion.

This breach of contract insurance dispute stems from Hurricane Irma damage. ([Doc. 3](#)). Plaintiffs filed this case in state court, and Defendant removed it to federal court based on diversity jurisdiction. ([Doc. 1](#)). Along with removal came Defendant's motion to dismiss filed in state court. ([Doc. 4](#)). A week after

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² Plaintiffs have moved to strike the notice of removal ([Doc. 10](#)) and remand the case to state court ([Doc. 11](#)).

removal, Defendant answered the Complaint and asserted affirmative defenses. (Doc. 9).

Local Rule 4.02 governs removal of cases from state court. Pertinent here, it says, “When a case is removed to this Court with pending motions on which briefs or legal memoranda have not been submitted, the moving party shall file and serve a supporting brief within 14 days after the removal[.]” M.D. Fla. R. 4.02(c). Defendant has not followed this rule. The motion relies on Florida procedural rules and does not account for any federal jurisprudence on the matters raised. Defendant also has since answered the Complaint rendering the motion to dismiss moot. *See, e.g., Capital Preferred Ins. v. Whirlpool Corp., No. 2:13-cv-868-FtM-29UAM, 2013 WL 12156450, at *1 (M.D. Fla. Dec. 23, 2013)* (denying as moot a motion to dismiss filed in state court before removal because, in part, “[a] defendant is not required to file an answer until court disposes of the motion to dismiss.” (citations omitted)). The Court thus denies the motion to dismiss.

Accordingly, it is now **ORDERED**:

Defendant Hartford Insurance Company of the Midwest’s Motion to Dismiss Complaint (Doc. 4) is **DENIED**.

DONE and **ORDERED** in Fort Myers, Florida on October 6, 2020.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record